lants or their servant must be conclusive in their favour in negativing negligence on the part of either of them.

It remains only to add a word on the cross-appeal on nuisance. Foreseeability being also an element in the tort of nuisance, the cross-appeal equally fails.

I would allow this appeal, dismiss the cross-appeal and set aside the judgment of the learned Chief Justice, with costs here and in the court below.

Raja Azlan Shah and **Pawan Ahmad JJ.** concurred.

Appeal allowed.

Solicitors: *Skrine & Co.; Donaldson & Burkinshaw.*

FOONG YEW SACK v. FOONG YEW SENG

[O.C.J. (Chang Min Tat J.) January 12, 1968]
[Ipoh — Originating Summons No. 564 of 1967]

Landlord and Tenant — Subletting prior to effective date of Control of Rent Act — Election to treat subtenancy as joint-tenancy — Whether notice could be given more than three months after Act came into force — Control of Rent Act, 1966, s. 19(2) — Construction of.

Interpretation — Control of Rent Act, 1966, s. 19(2) — Rule to be followed where meaning is plain.

This was an application under O. 54A r. 1A, R.S.C. 1957, for the construction of section 19(2) of the Control of Rent Act, 1966. The question for the decision was whether a landlord of controlled premises could by notice given more than three months after the coming into force of the Act on January 1, 1967 but within one month from his receipt from the tenant of the statement in writing of the particulars of subletting, elect to treat a subtenancy existing before January 1, 1967 as a joint-tenancy.

Held: on a proper construction of section 19(2) of the Control of Rent Act a landlord had three months from January 1, 1967, in the case of a sub-letting existing before that date to make his choice to treat such sub-letting as a joint-tenancy.

Cases referred to:—

(1) *Curtis* v. *Stovin* (1889), 22 Q.B.D. 512.

(2) *Ditcher* v. *Denison* (1857), 11 Moore P.C. 324 at p. 337; 14 E.R. 718 at p. 723.

(3) *Cowper-Esesx* v. *The Local Board of Acton* (1889), 14 App. Cas. 153 at p. 169.

ORIGINATING SUMMONS.

S. A. Lingam for the applicant.

S. N. Leow for the respondent.

Cur. Adv. Vult.

Chang Min Tat J.: This is an application made by way of originating summons under Order 54A rule 1A of the Rules of the Supreme Court for construction of section 19(2) of the Control of Rent Act, 1966 whether a landlord of controlled premises could, by notice made more than three months after the coming into force of the said Act on 1st January, 1967, but within the period of one month from his receipt from the tenant of the statement in writing of the particulars of the sub-letting, elect to treat the subtenancies existing before the said 1st January, 1967 (hereinafter called the effective date) as joint-tenancies, and for various declarations of his rights under the Act in connection with such sub-letting by way of ancillary reliefs.

Section 19(2) reads as follows:—

"Upon receipt of the statement referred to in paragraph (a) of subsection (1) the landlord may within one month of the receipt of such statement or in the case of subtenancy existing on the date on which this Act comes into force, within three months of such date, by a notification served on the tenant treat such subtenancy as joint-tenancy. . . ."

Under section 19(1), the tenant is required, where he has sub-let the premises, within 14 days after each sub-letting or in the case of a sub-letting existing before the effective date within three months from that date to supply to the landlord with a statement in writing of the particulars of the sub-letting. I pause here to note that this statutory duty on the part of the tenant is to be performed without any demand from the landlord. Failure to do so on the part of the tenant is an offence under section 19(6) of the Act and would appear to render him liable to an order for the return of the premises to the landlord under section 16(1)(b) of the Act.

No difficulty arises in the case of subtenancies granted after the effective date, and nothing hinges on the failure on the part of the tenant to supply within the time stipulated in the Act the relevant information regarding the sub-letting, as the landlord has one month from the receipt by him of the statement to elect to treat the sub-letting as a joint-tenancy.

But in the case of sub-letting granted before the effective date, difficulty can arise, or perhaps it is more accurate to say, can appear to arise where the tenant fails to comply with his statutory duty within the period of three months from the effective date. In such circumstances, the landlord could *prima facie* reasonably complain that he had to await the receipt of the relevant statement in writing of the sub-tenancy or subtenancies from the tenant before he could be in a position to exercise his election and from thence, argue that he must have, and it is within the meaning of the Act to give him, the period of one month after the receipt of the statement and he was not limited to the period of three months from the effective date.

Even if one's sympathy for the landlord, who is so badly served by his tenant, is not misplaced, it is nevertheless the plain duty of the court to construe the pertinent section in its plain and obvious meaning and to give effect to the intention of the Legislature as expressed in the language of the Act.

On behalf of the landlord, it is argued that the first limb of section 19(2) refers to both sub-tenancies granted after or before the effective date and that, in either case, the landlord has one month from the receipt by him of the statement of sub-letting before he is bound to make his election.

This argument, attractive though it may be, has the obvious disadvantage of ignoring the second limb of section 19(2) and treating the words therein, in particular the words "in the case of sub-tenancy existing on the date on which this Act comes into force" as mere surplusage. In matters of interpretation, there is a presumption, unless for good reason to the contrary, against treating any word as surplusage. It had been held in *Curtis* v. *Stovin*,[1] *per* Bowen L.J. at page 517 that:—

"The rules for the construction of statutes are very like those which apply to the construction of other documents, especially as regards one crucial rule, viz., that, if it is possible, the words of a statute must be construed so as to give a sensible meaning to them. The words ought to be construed *ut res magis valeat quam pereat.*"

In *Ditcher* v. *Denison*,[2] the Judicial Committee had this to say:—

"It is also a good general rule in jurisprudence that one who reads a legal document, whether public or private, should not be prompt to ascribe, should not, without necessity or some sound reason, impute to its language tautology or superfluity, and should be rather at the outset inclined to suppose each word intended to have some effect, or be of some use."

Lord Bramwell in the House of Lords case of *Cowper-Essex* v. *The Local Board of Acton* [3] said:—

"The words of a statute never should in interpretation be added to or subtracted from without almost a necessity."

In my view, the second limb is not surplusage. In accordance with this rule of interpretation, it must be given effect to. The meaning, at least to me, is plain and obvious. The natural meaning of the phrase "in the case of sub-tenancy existing on the date on which the Act comes into force" qualifying the second limb and its syntactical juxtaposition make it abundantly clear and obvious that in the case of such a sub-tenancy, the landlord had three months from the effective date to make his election. There does not seem to me to be any other interpretation without making the whole limb unnecessary as tautologous or without making the qualifying phrase surplusage. The first limb must, therefore, refer exclusively to sub-tenancies granted after the effective date and cannot be given the extended meaning sought by the landlord.

I find confirmation for my view in the provision in the sub-section for service of the notice of election not on the sub-tenant, but on the tenant. This provision, which creates an immediate contractual relationship between the landlord and the sub-tenant, obviating thereby the common law necessity for a demand by the landlord to the sub-tenant or an offer by the sub-tenant to the landlord to attorn tenant, was, in my view, enacted specifically to enable the landlord to get round the difficulty posed by the tactics of an obstructive tenant who, for reasons of his pocket, would desire to retain the sub-tenancy, in keeping the landlord in the dark of the particulars of the sub-tenancy.

I find further confirmation in the provision of a specific time-table for the exercise of the landlord's election, and I read in such a provision the intention of the Legislature to indicate finality in determining the relative status of the several parties to the letting and sub-letting.

As for the complaint by the landlord that he could not reasonably exercise his election without first knowing the particulars of the sub-letting, the answer lies in the history of the legislation. It is notorious that in the case of controlled premises, many chief tenants have been able to enjoy the economic profits from the premises which landlords, not without justification, felt should accrue to them, and it was this dissatisfaction on the part of the landlords that had, at long last, led to the enlargement of their rights in the latest Control of Rent Act, 1966, by which such benefits could, at their option, go to them. If it was the dissatisfaction of the landlords that had resulted in the amendment, I do not think it is open to any landlord to say that he is not aware of existing sub-tenancies. He had time enough to get to know. Under the repealed Ordinance (No. 2 of 1956) he had a right to know from the tenant, similarly without demand on his part, under penalty of an offence on the part of a non-complying tenant. Then, by design, he was given what could only be regarded as more than reasonable time to know of his rights of election and, by extension, the particulars of the sub-letting. The 1966 Act in Bill form was published on the 23rd June, 1966. It was passed in Parliament and received the Royal assent on the 16th July, 1966. In its final form, it was published on the 28th July, 1966. By legal notification published on the 22nd December, 1966, it was brought into force as from the 1st January, 1967. If any landlord had not exercised his right to be advised of the sub-letting under the repealed Ordinance, he nevertheless had, at the least, from the 28th July, 1966 to the 31st March, 1967, to obtain such information. He had ample time and opportunity to know where his interests lay and how to protect them. Any complaint that he had been ignored and ill-treated by his tenant does not, therefore, merit any sympathy, even if founded on facts. In any event, construction, of a statute depends not on the equity but on the meaning of the words.

To my mind, therefore, on a proper construction of section 19(2) of the Control of Rent Act, 1966, a landlord had three months from the 1st

January, 1967, in the case of sub-letting existing before that date, to make his choice to treat such sub-letting as a joint-tenancy. His right expired after the 31st of March, 1967.

In view of this construction, no necessity arises to make any of the declarations asked for by way of ancillary reliefs.

Order accordingly.

Solicitors: *S. A. Lingam; S. N. Leow.*

TAN BING HOCK v. ABU SAMAH

[O.C.J. (Gill J.) January 18, 1968]
[Raub — Civil Suit No. 5 of 1967]

Contract — Illegal contract — Damages for breach of — Assignment of non-transferable right in land — Parties in pari delicto.

The defendant held a licence to extract timber from a specified forest area. He entered into a contract with the plaintiff by which for a consideration of $2,000, the right to extract timber was assigned to the plaintiff. The contract was in contravention of rules 2 and 18 of the Forest Rules 1935 which provide that no licence issued thereunder shall be transferable. The plaintiff brought an action for breach of the contract. He did not dispute the fact that the contract on which the action was founded was illegal, but contended that he was entitled to recover damages on the ground that he was not aware of the illegality.

Held: the evidence showed that both parties were *in pari delicto*. The loss must lie where it fell. The plaintiff could not found an action on the illegal contract to recover damages from the defendant.

Cases referred to:—

(1) *Hee Cheng* v. *Krishnan* [1955] M.L.J. 103.

(2) *Archbolds (Freightage) Ltd.* v. *Spanglett Ltd.* [1961] 1 All E.R. 417.

(3) *Sajam Singh* v. *Sardara Ali* [1960] M.L.J. 52, P.C.

(4) *Palaniappa Chettiar* v. *Arunasalam Chettiar* [1962] M.L.J. 143, P.C.

CIVIL SUIT.

D. A. Devadason for the plaintiff.

Kam Woon Wah for the defendant.

Cur. Adv. Vult.

Gill J.: This is an action for damages for an alleged breach of a contract in writing dated the 30th day of August, 1965 whereby the defendant as the holder of a licence to take forest produce from the forest area of about a thousand acres known as Block 19 in Chegar Perah in the State of Pahang agreed to allow the plaintiff to fell, transport and sell timber from the said area for a consideration of $2,000.

The licence to the defendant was issued by the State Forest Officer, Pahang, on 1st July, 1965 under rules 2 and 18 of the Forest Rules, 1935. Under the contract in question between the parties the defendant as the licence holder was to make all arrangements with the Government concerning the area covered by the licence and the plaintiff was to compensate him for all expenses incurred in that connection. The plaintiff was also to pay the deposit of $2,000 and all other dues required to be paid to the Government under the terms of the licence and by virtue of any of the rules contained in the Forest Rules, 1935. In exchange for all the payments which the plaintiff undertook to make on behalf of the defendant as licence holder he was to have the full right to extract and sell for his benefit timber from the forest area in question. For the purported transfer of all the rights under the licence the plaintiff was to pay the defendant a sum of $2,000. It is thus clear that to all intents and purposes the agreement between the parties was a complete assignment of the rights in the licence to the plaintiff.

The licence issued to the defendant which is in evidence as Exhibit D.14 was clearly marked "Not transferable". The additional conditions annexed to the licence were that there was to be no transfer of it to another person by a power of attorney or by sub-letting or by other means and that no sub-contracts or partnerships may be made in connection with the licence without a prior approval in writing from the District Forest Officer. Rules 2 and 18 of the Forest Rules, 1935 provide that no licence issued thereunder shall be transferable. It seems clear therefore to me that the contract on which this action is founded was illegal. In this connection *Pollock and Mulla* on the Indian Contract Act (7th edition), page 145 in the commentary on section 23 of the Act, on which section 24 of our Contracts Ordinance, 1950 is based, says:—

> "Where a specific kind of land or specific rights in land have been declared by the legislature to be not transferable, a transfer of such land or rights in land is void, as to permit it would be to defeat the provisions of the law within the meaning of the section."

That passage was cited with approval by Thomson J. (as he then was) in *Hee Cheng* v. *Krishnan.*[1]

Counsel for the plaintiff did not seek to argue that the contract between the parties was not illegal. In fact he conceded that if the plaintiff knew at the time of the agreement that it was an illegal contract, then his claim must fail. He however, argued that the point at issue was whether the plaintiff knew that the contract was illegal. In this connection it was contended on the basis of the evidence given by the plaintiff that he was not aware of the illegality. His story is that before the agreement was signed he did not discuss the terms of the agreement with the defendant. He was asked to sign the agreement and he signed it. The agreement was in the Malay language and he did not get anybody to explain the agreement to him. He only knew a few terms of the agreement which the defendant explained to him and he only came to know